



## **Florence School of Regulation**

### **The New 'EU Energy Law and Policy' Area of FSR Energy**

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### **Working Program for 2010-2011**

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*Object:* This document presents our vision for the coming years 2010-2011 and how we intend to work with the dedicated sponsors of the new FSR EU Energy Law and Policy area.

#### **I. Background**

The Florence School of Regulation (FSR) is a partnership between the European University Institute (EUI)/Robert Schuman Center for advanced Studies (RSCAS), the Council of the European Energy Regulators (CEER) and the Independent Regulators Group (IRG), and it works closely with the European Commission. Its key objectives are to:

- Organize policy events dealing with key regulatory issues
- Provide state-of-the-art training for practitioners
- Produce analytical and empirical research in the interdisciplinary field of regulation. On this side, we are particularly proud to announce that the FSR has been selected to create the official Think Thank of the DG Energy by February 2010 (for a period of 3 years)
- Promote networking, through documents and exchange of ideas. The FSR will also provide a web platform and a secretariat for the working groups of ICER (“International Confederation of Energy Regulators”), the new worldwide association of energy regulators. A similar platform service is envisaged with MEDREG (the Mediterranean association of energy regulators)

In its first years of activity, the FSR was particularly active in the energy sector while also organizing workshops on regulation in the transport sector and meetings on comparative analysis of regulation in different industries including telecommunications and finance. The expansion of the FSR to the communications and media area has already started with a workshop taking place in the area in Fall 2009. The establishment of a transport area will be happening in 2010.

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Given the ever-increasing importance of the legal dimensions of energy regulation, the FSR has decided to create a fully fledged area in 'EU Energy Law and Policy' with dedicated sponsors. To this effect, the FSR has recently appointed Pr Leigh Hancher (Tilburg University) as a scientific advisor. Dr Adrien de Hauteclocque (Florence School of Regulation, EUI RSCAS) will act as coordinator of the new area. Dr Nicole Ahner (Florence School of Regulation, EUI RSCAS) and Ernesto Bonafe (FSR training coordinator and a PhD candidate at the EUI law department) are also bringing their legal expertise to the FSR. A kick-off event took place the 27<sup>th</sup> November 2009 and gathered more than 50 delegates from the European Commission, national regulatory authorities, law firms and the industry.

This document presents our vision for the coming years 2010-2011 and how we intend to interact with the dedicated sponsors. Financing and other resources for the initiatives and management of the FSR are provided by the partners (CEER, European Commission) and by a number of regulated or non-regulated companies with an interest in the FSR activities. The sponsors of the new EU Energy Law and Policy area will contribute through the payment of an annual fee. The new EU Energy Law and Policy area will be based on three pillars:

- a series of three sponsor-lead FSR EU Energy Law and Policy Workshops taking place in Florence
- the first FSR & BNetzA Forum on Legal Issues of Energy Regulation organized in cooperation with the BNetzA under the official patronage of CEER
- the first Spring School in EU Energy Law and Policy organized to complement the current training offer of the FSR. Advanced trainings might also be organized in the future.

## **II. FSR EU Energy Law and Policy Workshops**

The first and main strand of activity of the new area will be the organization of a series of three policy workshops. These events will be invitation-only workshops aiming to address both topical and controversial recent developments in European energy law & policy in a round table format with participants from university, industry, partner institutions and law firms, and possibly also other advisors. Themes for discussion will be selected in order to shape the policy debate and speakers will be consequently chosen among the renowned experts on the specific subject matter. Shortly after each workshop a brief summary of the event is made available on the FSR website, while the material is available on the FSR intranet accessible to the FSR partners and sponsors.

On the 27<sup>th</sup> November 2009, a kick-off workshop was already organized in Florence. It aimed first to investigate the ways in which EC Competition Law (in particular antitrust and state aids) is used and likely to be used to push forward the completion of the internal market in energy. We reviewed the recent developments of Art 82 EC cases and debated the on-going cases. We then focused on the treatment of long-term supply contracts under state aid and the relationship between state aid rules and the ETS, the ETD and Renewables. The second part of the day first discussed the procedural and substantive dimensions of the creation of ACER. The information and confidentiality issues raised by the new third liberalization package pointed out as prominent issues for the future. The last part of the day discussed the on-going initiatives of the European Commission on LNG and the challenges of a massive deployment of renewables for wholesale market design. In the future, possible areas of discussion are likely to feature:

- The influence of climate change issues on the energy industry and the need for European solutions
- The legal foundations of EU Energy Policy
- The functioning of the new ACER, the ENTSOs and the regional energy markets.
- Judicial review of the output of these various institutions - what constitutes a legal act - who can challenge what and where?
- Non-judicial or alternative review/control of the new institutions - e.g. access to documents - role of the ombudsman - other forms of control/supervision
- Legal issues around transparency and exchange of information - also in the light of the Commission's recently announced plans to launch new legal initiatives on wholesale market transparency. Is there a need to develop a European code of 'best regulatory practices'?
- Antitrust, the evolving practice of the commitment decisions and the recent State Aid cases

These are of course provisional ideas and we expect the sponsors to take a prominent part in the definition of the content of these workshops (see last section).

The first workshop of the new area will take place on the 28<sup>th</sup> of May 2010 with Philip Lowe (Director General, DG Energy) as the keynote speaker. The provisional program can be found on our website. This workshop will focus on two issues: priority access for renewable energy into the grid and the new wholesale transparency requirements of the Third Energy Package. The second workshop should specifically target investment into the grid and take place on the 24<sup>th</sup> of September 2010. The provisional timetable of the three FSR EU Energy Law and Policy Workshops is as follows:

1st Workshop	28 <sup>th</sup> of May 2010
2nd Workshop	24 <sup>th</sup> of September 2010
3rd Workshop	1 <sup>st</sup> Semester 2011

### III. The FSR & BNetzA Forum on Legal Issues of Energy Regulation

Regulating network industries, such as energy, telecommunications and transport is a complex task involving national regulatory authorities, as well as EU institutions. The FSR was established as a point of reference for regulatory theory and practice in order to draw on the knowledge and experience accumulated in different countries and different period of time. The activities of the FSR started in the energy sector as the CEER and the European Commission have cooperated with the EUI (RSCAS) since 1998, when the European Electricity Regulation Forum (known as the Florence Forum) was created. At the time of its creation the Florence Forum was a very innovative initiative, as it supported regulatory decision-making and brought together representatives from all the relevant stakeholders and member states along with the European



Commission and the CEER. The inspiration to develop the FSR came from some of the participants of the Florence Forum, with the intention of creating a gateway for regulatory learning, debate and research. For the later activity, the FSR together with the newly established Loyola de Palacio Research Chair in European Energy Policy, created in the honour of Loyola de Palacio, promotes a much needed research mustering academic knowledge and analytical skills in all the social sciences.

The FSR is thus essentially a European Forum dedicated to regulation where policy and business decision-makers, regulators, regulated companies and academics from different countries who are involved in regulatory activities can meet, allowing the development of cross-country issues and understanding, as well as comparing national experiences and country specific regulatory problem. The FSR provides a permanent forum for communication and consensus-building in which to find the appropriate balance among European and national institutions, among national and supra-national issues, in order to identify the best economic and legal instruments, and to ensure that national regulators reach adequate levels of efficiency, independence and accountability.

With the on-going Europeanization of energy regulation and the creation of ACER, it is our understanding that legal departments of national regulatory authorities are increasingly under pressure and confronted with new issues. In the quickly evolving legal context of energy regulation, it is thus striking to see that legal experts of national regulatory authorities do not have a proper platform to discuss among themselves and with specialists the new challenges they face. The lack of an adequate forum dedicated to legal experts of national regulatory authorities is detrimental to the completion of the Internal Energy Market.

This is why the FSR and BNetzA are willing to create the Forum on Legal Issues of Energy Regulation. Organized for and driven by national regulatory authorities themselves, the FSR Forum on Legal Issues of Energy Regulation will aim to foster sharing of experiences and debate on best practices. The regulators from MEDREG countries and Energy Community Treaty regulators will be associated as much as possible to the discussions. The Forum is likely to discuss the following issues:

- appeal procedures and court review, with the presentation by regulators themselves on how they handled cases in their own national system
- information sharing, confidentiality, access to documents
- independence
- complementarities between regulators and national competition authority
- relevant cases from EU courts (e.g. Case C-474/08 Commission v Kingdom of Belgium)
- the internal decision-making process of ACER

The cooperation with BNetzA will be crucial to be able to address as closely as possible the real issues faced by national regulatory authorities, involve other national regulatory authorities on a continuous basis and from the very beginning of the initiative, and ensure dissemination of the results to a wider audience. The first FSR Forum on Legal Issues of Energy Regulation will take place on the 15<sup>th</sup> of October 2010 in Florence.

#### **IV. Training in EU Energy Law and Policy**

Training activities have been core to the FSR from its very start. Since 2004, over 500 participants have been taking part in our courses. Training courses are open to the staff of both regulators and sponsoring companies. During the years the geographical basis of our participants has expanded from EU countries to include EU candidate countries, signatories of the South-East Energy Treaty, former Soviet countries and MEDREG countries. On top of receiving very positive feed-back on the contents of the courses many students have also appreciated the opportunity to develop a lasting network with their fellow participants.

With the internal development of legal expertise within the FSR and the appointment of Pr Leigh Hancher, it is only logical that the FSR decides to provide professional training in this area. It is indeed our conviction that legal issues of energy regulation will increasingly have a European and even global component and that the fast pace of development in this field makes the day-to-day work of legal specialists involved in the energy sector in their home country more and more complicated. The training in EU Energy Law and Policy will be designed to develop a sound knowledge of EU energy law for staff of energy regulatory authorities and for sponsors, especially utilities. The course will be provided by prominent academics, practitioners, former and current regulators or official of the European Commission. It will also offer a valuable opportunity to establish contacts between professionals working on the changing sector of electricity and gas. All participants to the course will thus be invited to join the on-line FSR Alumni group. Energy liberalization is evolving conceptually and expanding geographically very fast and therefore, there is a need to keep in touch and to keep discussing energy. The training will be hosted on the outstanding premises of the EUI in Florence and the week will include social events to stimulate networking among participants from different countries and legal cultures. The audience will be limited to 30 participants and the course fee should be around 2500 euros for a one week training, excluding transportation and accommodation costs. Shorter advanced training of two days will also be considered.

#### **V. Sponsorship**

Private sponsorship is a pillar of the FSR since the very beginning and we have always been proud to receive support from the industry. The FSR major sponsors for 2009 are EDF, Endesa Spain, Enel, Eni, Iberdrola, National Grid and Vattenfall. Associate sponsors for 2009 are Edison, Electrabel, Elia, EnBW AG, Gas Natural, Gas de France Suez, Gestore Mercaturo Elettrico (GME), Hera SpA, OMV, Red Electrica de Espana (REE), REN, Union Fenosa and Verpund APG.

The new FSR EU Energy Law and Policy area is thus actively looking for support among interested third parties. Dedicated sponsors can be either law firms or energy companies not already sponsor of the FSR. Sponsors will constitute our Advisory Council and will meet at regular intervals. They will be expected to take an active part in the design of the FSR EU Energy Law and Policy Workshops. At each workshop, a sponsors' meeting will be organized where the further activities will be discussed. Sponsorship commitment will always be for the current and the next year so that we can ensure continuity in the activities. The sponsorship fee has been set at 7500 euros for the incoming period (Jan 2010 – July 2011). Sponsorship of the new area will thus open the right to:



- advise in advance on the subjects to be discussed at the Workshops and suggest relevant speakers
- send two delegates to the Workshops
- propose guest participants who are not speakers but who can make substantial contributions to the issues to be discussed at the Workshops
- participate to all the activities of the new area, including the FSR Forum on Legal Issues of Energy Regulation
- have priority for the attendance of the Training in EU Energy Law and Policy (with a separate fee).

### **Contact**

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